

PT 98-49

Tax Type: **PROPERTY TAX**

Issue: **Grounds For Burying the Dead**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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ARLINGTON CEMETERY	)	
D/B/A	)	No. 95-22-294
ELM LAWN CEMETERY,	)	
APPLICANT	)	
	)	
	)	Real Estate Tax Exemption for
	)	1995 Assessment Year
	)	
v.	)	P.I.N.: 03-036-205-001
	)	
	)	DuPage County Parcel
ILLINOIS DEPARTMENT	)	
OF REVENUE	)	Alan I. Marcus
	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Donald B. Garvey on behalf of Arlington Cemetery; Mr. Robert Rybica, Assistant State's Attorney for the County of DuPage on behalf of the DuPage County Board of Review.

**SYNOPSIS:** This proceeding raises the issue of whether any or all of real estate identified by DuPage County Parcel Index Number 03-36-205-001 (hereinafter the "subject property" or the "subject parcel") qualifies for exemption under 35 ILCS 200/15-45,<sup>1</sup> wherein

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1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks

"[a]ll property used exclusively as graveyards or grounds for burying the dead" is exempted from real estate taxation.

The controversy arises as follows:

On July 17, 1995, Arlington Cemetery d/b/a Elm Lawn Cemetery (hereinafter the "applicant") filed a Petition for Property Tax Exemption with the DuPage County Board of Review (hereinafter the "Board") (Dept. Group. Ex. No. 1, Doc. A). The Board reviewed the applicant's petition and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted, save for three acres used for animal remains. *Id.*

The Department partially rejected this recommendation by issuing a determination dated January 25, 1996. Said determination found that the entire parcel, including the portion used for pet remains, qualified for exemption from 1995 real estate taxes. The Board filed a timely request for hearing on February 1, 1996 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be partially reversed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that the entire subject parcel qualifies for exemption from 1995 real estate taxes, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept Ex. No. 2.

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exemption from 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

2. Applicant was originally incorporated as "Arlington Cemetery, Inc." under the Business Corporation Act of Illinois on September 4, 1935. Its Articles of Incorporation (which have been subject to numerous amendments) and by-laws do not contain any statement of corporate purpose. Applicant Ex. No 1.
3. Applicant is, nevertheless, a for-profit entity. Its by-laws provide, *inter alia*, that: (1) applicant's daily business affairs shall be managed by a 5-member board of directors; (2) the corporation shall have one president, one or more vice presidents, a treasurer, a secretary and such other officers as may be elected in accordance with the relevant provisions of applicant's by-laws; and (3) applicant's fiscal year shall begin on the first day of January of each year and end on the ensuing December 31 thereof. Applicant Ex. Nos. 1, 2; Tr. pp. 61-62.
4. Applicant's principal sources of income are from the sale of easements,<sup>2</sup> burial charges, monument fees, transfer fees and trust fund revenues. Its expenses are mostly devoted to maintenance, road, roof and equipment repairs, purchasing new equipment, insurance and salaries.<sup>3</sup> Tr. pp. 55-61.
5. The subject property is located at 401 East Lake Street, Elmhurst, IL 60126. It consists of 3.15 acres, the entirety of which applicant acquired ownership of via a warranty deed dated November 9, 1994. Dept. Group Ex. No. 1, Doc. A; Joint Ex. No. 1; Applicant Ex. Nos. 3,4,5,6,7.
6. The subject parcel was not entirely platted for graves during the 1995 tax year. Tr. pp. 42-46, 51.

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2. Applicant charged \$400.00 for an easement that eventually would be used as a burial place for human remains. Applicant also sold pet burial easements for \$79.00. Tr. p. 55.

7. One portion of the subject property, that occupied 1/3 of one acre, contained pet remains. Dept. Ex. No. 1, Doc. C; Tr. pp. 42-46, 48-49, 62-64.
8. A separate one third of the subject parcel was platted, and actually used for, only human burials. Tr. pp. 52, 64.
9. The remaining portions of the subject property (*viz.* those neither included in the aforementioned one third used for human burials nor the one third of an acre used for mixed human and pet burials), were unplatted during 1995. Tr. p. 53.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting a portion of the subject property from 1995 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the entirety of said property qualifies for exemption under 35 ILCS 200/15-45 should be partially reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety

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3. I am unable to provide exact income and expense figures for the tax year in question because applicant did not submit any financial statements into evidence.

Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986) Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959) Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983)

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 ILCS 200/1-3 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-45, wherein "[a]ll property used exclusively as graveyards or grounds for burying the dead" is exempted from real estate taxation.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987) Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and convincing evidence that the property in question falls within the appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)

This case raises a very specific yet novel question of statutory interpretation, that being whether areas used to bury animal or pet remains fall within the aforementioned exemption provision. Resolving that inquiry requires applying a methodology that begins with recognition of certain key facts, continues with a statement of pertinent legal principles and concludes with application of those principles to the appropriate facts.

The essential facts of this case are as follows: (1) applicant is a for-profit corporation, duly incorporated under the Business Corporation Act of Illinois; (2) applicant owned the entire

subject parcel throughout the 1995 tax year; (3) the entire subject parcel consists of 3.15 acres; (4) only one third of the entire parcel (or 1.05 acres)<sup>4</sup> was used for human burials during 1995 and (5) another portion of the subject property was unplatted,<sup>5</sup> and therefore not actually used for human or other burial purposes, during the 1995 tax year.

The record also establishes that 1/3 of an acre was used for pet burials, although it is unclear as to whether any human remains were actually interspersed with those of the pets during the 1995 tax year. *See*, Tr. pp. 42-46, 48-49, 50, 53, 63-64. Such lack of clarity raises doubts (all of which must be resolved in favor of taxation, *see*, *supra* at p. 5) as to whether this portion of the subject property was in exempt use throughout the tax year in question. However, the testimony of applicant's president, Robert Troost, clearly establishes that no fewer than 350 animals were buried in this segment of the subject property during 1995. Said testimony further establishes that only 50 to 100 humans were buried in this same segment during the tax year in question. Tr. p. 48.

Based on this portion of Mr. Troost's testimony, I conclude that: (1) the 1/3 of an acre was primarily used for internment of pet or animal remains during 1995; (2) any human internments that took place on this portion during 1995 were therefore incidental to those associated with the pets and (3) incidental uses are legally insufficient to establish exempt use. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), (hereinafter "IIT")

These facts must be analyzed according to the above-stated rules of statutory construction and certain elementary legal principles, first among which is that the primary use of real estate, rather than its incidental use or uses, determines tax exempt status. IIT, *supra*. This fundamental principle has been subject to varying applications in the following "distinct situations[:]"

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4. Assuming that the subject parcel is divided in thirds,  $3.15 \text{ (total acreage)} / 3.0 \text{ (parts into which the subject parcel is divided)} = 1.05$ . Thus, each third of the subject property is 1.05 acres.

5. These areas shall hereinafter be referred to as the "unplatted portions" of the subject property.

First is the case where the property as a whole, or in unidentifiable portions is used both for an exempting purpose and a non-exempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [citations omitted]. In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a non-exempting purpose or not at all. [citations omitted].

IIT at 66<sup>6</sup>

The above principles serve as corollaries to the equally fundamental tenet that applicant's actual use, as opposed to its intended use, determines whether the property in question is used for an exempt purpose. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994)

Here, one portion of the subject property was exclusively used for pet burials during 1995. The exempt status of that specific 1/3 of an acre depends on whether the phrase "grounds for burying the dead ..." contained in Section 200/15-45 is limited to the internment of human remains. For the following reasons, I conclude that Section 200/15-45 is so limited.

If Section 200/15-45 were not limited to burial of human remains, property tax exemptions would be available for *any* property used to bury *any* dead thing, including private individuals who bury dead pets in their back yards. Such an absurd result would clearly violate the fundamental principles mandating that: (1) exemption statutes be strictly construed, with all doubts resolved in favor of taxation; and (2) the General Assembly can not enlarge the scope of exemptions beyond that specified in the State Constitution. *See, supra*, at p. 5.

In order to effectuate these limitations, one must remember that applicant herein is a for-profit corporation duly incorporated under the Business Corporation Act. Due to its status as a

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6. The IIT court applied these principles to a record which established that only a portion of the 107-acre tract under consideration was actually used for exempt educational purposes. It exempted that specific portion and held that "[w]here a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." *Id.* at 64

for-profit corporation, applicant is not subject to the municipal cemetery statutes contained in 65 **ILCS** 5/11-49-1 through and including 65 **ILCS** 5/11-52.2-1, none of which make any mention of pet cemeteries or the exempt status thereof.

Applicant also is not a cemetery maintenance district, the operations of which are governed by 70 **ILCS** 105/1 *et seq.* Nor is applicant incorporated as a cemetery association, for if it were, its property would be exempt by operation of 805 **ILCS** 320/14.<sup>7</sup> Rather, applicant is a privately incorporated entity whose operations are governed by the Cemetery Care Act, 760 **ILCS** 100/1 *et seq.*

Section 2 of the Cemetery Care Act contains the following definitions:

"Person" means any person, partnership, association, corporation or other entity.

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"Cemetery" means any land or structure in this State dedicated and used for, or intended to be used for, the internment of *human remains*.

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"Grave" means a space of ground in a *cemetery*, used, or intended to be used, for burial.

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"Niche" means a space in a columbarium used or intended to be used, for inurnment of cremated *human remains*.

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7. Section 320/14 states that:

The property, both real and personal of any association organized under this act, shall be forever exempt from taxation for any and all purposes.

805 **ILCS** 320/14



"Entombment right" means the right to place *individual human remains* or individual cremated *human remains* in a specific mausoleum crypt or lawn crypt selected by the consumer for use as a final resting place.

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"Internment right" means the right to place individual *human remains* or cremated *human remains* in a specific underground location selected by the consumer for use as a final resting place.

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"Inurnment right" means the right to place individual cremated *human remains* in a specific niche selected by the consumer for use as a final resting place.

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"Lawn crypt" means a permanent underground crypt usually constructed of reinforced concrete or similar material installed in multiple units for entombment of *human remains*.

760 **ILCS** 100/2 (Emphasis added)

The above definitions and the entire Cemetery Care Act are completely devoid of any reference to pets or animals. Moreover, unlike the Cemetery Association Act, (805 **ILCS** 320/0.01 *et seq.*), the Cemetery Care Act contains absolutely no provision exempting real estate owned by entities that are subject to licensure and regulation thereunder.

The General Assembly has enacted many statutes pertaining to the care, disposal and slaughter of animals. *See*, 225 **ILCS** 605/1 *et seq.* (Animal Welfare Act), 225 **ILCS** 610/1 *et seq.* (Illinois Dead Animal Disposal Act), 510 **ILCS** 70/1 *et seq.* (Humane Care for Animals Act), 510 **ILCS** 75/0.01 *et seq.* (Humane Slaughter of Livestock Act) and 510 **ILCS** 77/1 *et seq.*

(Livestock Management Facilities Act). However, it has yet to pass any legislation that specifically governs pet cemeteries or the exempt status thereof.<sup>8</sup>

This lack of legislative direction, coupled with the rules of construction mandating that exemption statutes be strictly construed and that all doubts be resolved in favor of taxation, (*see, supra* p. 5) lead me to conclude that the phrase "grounds for burying the dead ..." as used in Section 200/15-45 is limited to the burial of human remains.

If the legislature intended a contrary result, it could have so stated in any of the aforementioned statutes governing cemetery operations. It also could have included animals or pets in the definitions contained in the Cemetery Care Act or at least added a provision to that legislation specifically exempting pet cemeteries.

My comments *supra* at pp. 7-8 raise questions as to whether such an enactment might violate Constitutional limits on the General Assembly's legislative authority. However, the exemption contained in Section 320/14 of the Cemetery Association Act (805 **ILCS** 320/14)<sup>9</sup> demonstrates that the General Assembly will specifically provide that a given entity's property be exempt from taxation, if that is the legislature's intent.

The General Assembly has not manifested such an intent with respect to pet cemeteries. Consequently, I conclude that the 1/3 of an acre used for pet burials should not be exempt from 1995 real estate taxes. Therefore, that portion of the Department's determination that implicitly exempted same should be reversed.

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8. For analysis of the burial grounds exemption in a jurisdiction that does have a pet cemetery statute, *see, Pickering County Board of Commissioners v. Joanne Limbach, Tax Commissioner of Ohio*, Ohio Board of Tax Appeals, Docket No. 90-G-807 (1992), wherein the Ohio Board of Tax Appeals denied exemption to a county-owned pet cemetery.

9. For text of that provision, *see*, footnote 7, *supra*, at p. 8.

This conclusion does not address whether the portion used for human burials or the unplatted portion of the subject property should be exempt from 1995 real estate taxes under Section 200/15-45. The foregoing analysis demonstrates that this provision has a very limited application, that being exempting real estate used for burial of human remains. As such, that specifically identifiable 1/3 of the subject property actually used for said purposes during 1995 should be exempt thereunder. Therefore, that portion of the Department's determination that implicitly exempted that specific 1/3 should be affirmed.

The unplatted portion of the subject property was not actually used for burial purposes during 1995. Moreover, the record lacks evidence to support the conclusion that said portion was immediately going to be used for burials at any time during that tax year. Consequently, the holding in Rosehill Cemetery Company v. Kern, 147 Ill. 483 (1893), wherein the Illinois Supreme Court denied exemption to a tract that was platted for burials but not actually used for that purpose during the tax year in question, mandates that the Department's determination with respect to the unplatted portion of the subject property be reversed.

In summary, the entire subject property does not qualify for exemption from 1995 real estate taxes because Section 200/15-45, like all exemption statutes, must be strictly construed in favor of taxation. As such, its application is, in the absence of any clear legislative mandate to the contrary, limited to exempting real estate actually used for the burial of human remains.

The present record establishes that only 1/3 of the subject property was actually used for that purpose throughout the 1995 tax year. Consequently, I am constrained to recommend that any and all portions of the subject property not included within that specifically identifiable 1/3 not be exempt from 1995 real estate taxes under 35 ILCS 200/15-45. Therefore, the

Department's determination, which implicitly exempted the entirety of said property, should be partially reversed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that: (1) the specific 1/3 of real estate identified by Du Page County Parcel Index Number 03--36-205-001 actually used for burials of human remains during the tax year in question be exempt from 1995 real estate taxes under 35 ILCS 200/15-45; (2) the specific 1/3 of an acre contained real estate identified by the same Parcel Index Number, wherein pet remains were interred during 1995, *not* be exempt from such taxes; and (3) the unplatted portion of the same real estate, which was not actually used for burial purposes during 1995, be likewise non-exempt.

September 3, 1998

Date

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Alan I. Marcus  
Administrative Law Judge